

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LIBERTY INSURANCE CORPORATION,

Plaintiff,

-against-

NEW YORK MARINE AND GENERAL INSURANCE
CO., AMERICAN EMPIRE SURPLUS LINES
INSURANCE CO., and HUDSON EXCESS INSURANCE CO.,

Defendants.
-----X

Civil Action No.
22-CV-1081 (DLC)

~~[PROPOSED]~~ 
JUDGMENT

JUDGMENT IN A CIVIL ACTION

The Court has “so-ordered” on March 21, 2023, the Settlement Agreement dated February 14, 2023 (“Settlement Agreement”) entered into by and among plaintiff Liberty Insurance Corporation (“Liberty”), and defendants New York Marine and General Insurance Co. (“NY Marine”), and Hudson Excess Insurance Co. (“Hudson”), pursuant to which NY Marine and Hudson acknowledge and agree that (1) each owed and owes a duty to defend 45 John NY LLC (“45 John”) for the action entitled Jose Manuel Juarez v. Primework Construction Corp., Avacon Management LLC and 45 John NY LLC, Index No. 160728/2017, which is pending in the Supreme Court of the State of New York, County of New York (the “Underlying Action”); (2) NY Marine's and Hudson's duties to defend 45 John are primary as compared to any such duty owed by Liberty, and that NY Marine's and Hudson's duties to defend 45 John are that of co-insurers with respect to each other; (3) as between NY Marine and Hudson, they each agree to be responsible for 50% of the past and future defense costs; however, they each owe 100% of the defense costs for 45 John.; (4) Liberty waives all claims of interest with respect to past defense

costs; and (5) NY Marine and Hudson, jointly and severally, will pay Liberty \$32,262.79 for post-tender defense costs incurred by Liberty prior to February 1, 2023, payment of which has been received by Liberty.

The Court has ordered, adjudged, declared, and decreed, pursuant to Opinion and Order dated March 22, 2023, that: (1) NY Marine has a duty to indemnify, subject to policy limits, 45 John for the Underlying Action; (2) Hudson has a duty to indemnify, subject to policy limits, 45 John for the Underlying Action; (3) The NY Marine Policy and the Hudson Policy are primary to the Liberty's Commercial General Liability policy, No. TB7-Z91-464711-027, with a policy period from October 1, 2017 to October 1, 2018, issued to Acquisition #1, LLC, as the first Named Insured and which includes 45 John as a Named Insured; (4) Hudson had and has a duty to defend NY Marine's named insured, Avacon, under the Hudson Policy, for the Underlying Action; (5) the Hudson Policy is primary and non-contributory to the NY Marine Policy with respect to Avacon; (6) NY Marine is entitled to the post-tender reasonable attorneys' fees and costs it incurred in its defense of Avacon in the Underlying Action from December 19, 2017, together with prejudgment interest at the rate of 9% per annum, which NY Marine and Hudson have subsequently settled at the Judicial Mediation held on April 28, 2023, pending receipt of the agreed-upon settlement proceeds; (7) due to the Court's finding that Hudson is an "unauthorized" insurer in New York State and that Hudson's refusal to defend 45 John constituted a vexatious failure to defend 45 John for the Underlying Action, Hudson must reimburse Liberty its reasonable attorney's fees incurred in the within federal action, pursuant to N.Y. Insurance Law § 1213 (d); and (8) that N.Y. Insurance Law §§ 1213(e), 2105, and 1113 do not exempt Hudson from

reimbursing Liberty's reasonable attorney's fees incurred in the within federal action, pursuant to N.Y. Insurance Law § 1213 (d) .

The Court has ordered, adjudged, and decreed, pursuant to Opinion and Order dated July 24, 2023, that Liberty recover from Hudson, the amount of Four Thousand Thirty-Two and 84/100 dollars (\$4,032.84) in reasonable attorney's fees incurred in the within federal action, under N.Y. Insurance Law § 1213(d), which amount is 12.5% of the \$32,262.79 owed by Hudson to Liberty for past defense costs in connection with the Underlying Action.

The Court has further ordered, adjudged, declared, and decreed, pursuant to Opinion and Order dated July 24, 2023, that Liberty recover from Hudson in the within federal action, 12.5% of any defense costs Liberty incurred after February 1, 2023 in connection with the Underlying Action.

This action was tried by United States District Judge Denise L. Cote on February 8, 2022 without a jury and the above decision was reached pursuant to Opinion and Order dated March 22, 2023. A determination of the amount of the attorney's fees awarded to Liberty recoverable from Hudson, in the within federal action, was reached pursuant to the Opinion and Order of Judge Cote dated July 24, 2023.

Date: _____

~~CLERK OF COURT~~

*The Clerk of Court shall
enter judgment as set forth
herein and close the case.*

Signature of Clerk or Deputy Clerk.

*Denise Cote
8/1/23*